IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5914, 9624, 7708,
and 10989 of 2001
with
SPECIAL CIVIL APPLICATION NOs 7830 to 7833, 8735,
8737,8739, 8763 to 8766 and 9127 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVINDRAKUMAR KANTILAL MODI

Versus

MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 5914 of 2001
   MR BG JANI for Petitioner No. 1-10
   MR YOGESH S LAKHANI for Respondent No. 1
   MR GM JOSHI for Respondent No. 3-54,56-58
2. Special C.A.Nos 9624, 7708 of 2001
   Mr.BG Jani for petitioners
   Mr.Y.S.Lakhani & Mr.Amit Panchal for respondents
3. Special C.A.No.10989 of 2001
   Mr.A.S.Dave for petitioners
   Ms.Banna Dutta for respondents

4. Special Civil Application Nos 7833 and 9127 of 2002
MR.G.M.Joshi for petitioners
Mr.H.C.Raval for respondents
5. Special Civil Application Nos 7830 to 7832,
8735. 8737, 8739, 8763 to 8766 of 2002
Mr.G.M.Joshi for petitioenr
Mr.Ashish M.Dagli for respondents

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 16-18/01/2003

ORAL JUDGEMENT

1. Rule in SCA Nos.5914, 9624, 7708, 10989 & 9127/01. So far as SCA Nos. 7830, 3132, 3133, 8735, 8737, 8739, 8763, 6465 & 6466/02 are concerned, they were already admitted. Respective advocates appearing on behalf of the respondent corporation have waived service of rule where rule is issued today. With the consent of the parties matters are taken up for final hearing.

2. Since more or less common questions are involved and common facts are there, they are being dealt with by this common judgment.

3. The present group of petitions are comprising of four categories, i.e. (i) persons who have been granted promotion on temporary basis from the post of Clerk to the post of Junior Assistant, (ii) the persons working in Jamnagar Depot and question for their interse seniority is raised, (iii) persons who have passed the requisite examination and they have been granted promotion on temporary basis to the higher post and (iv) persons who have been not only granted promotion to the first higher cadre but they have further been granted promotion to the next higher cadre and have been promoted thereafter also.

4. So far as categories (ii), (iii) and (iv) are concerned, it is relevant to note that as per the set up in the ST corporation, the post of Conductor is treated as below the post of Driver. However, from both the sources of Conductor as well as Driver, there are promotional avenues to the post of Traffic Controller. From the post of Traffic Controller, there is further promotional avenue to the post of Asst.Traffic Inspector, and from the post of Asst.Traffic Inspector there is further promotional avenue to the post of Traffic

Inspector. In this petition, the employees covered under categories (ii), (iii) and (iv) would be covered under the aforesaid set up from the cadre of Conductor to the post of Traffic Inspector and they are relating to Jamnagar Division which has been independently formed by separating from the Rajkot Division. Since the category of employees who are petitioners in respect of these petitions will be relevant for the sake of convenience they shall be referred to either by category or by their cadre as the case may be hereinafter.

5. So far as the first category is concerned, they were appointed on the cadre of Junior Clerk and it is the case of the petitioners therein that they passed the requisite examination for promotion to the post of Junior Asst.when they were in the other division, i.e. the division other than the Central division. It is also the case of the petitioners therein that their names were shown in the select list which, as per the say of the corporation, is the list of successful candidates who passed the examination and not the seniority list of that division. It is the further case of the petitioners therein that on account of request transfer they had abandoned their seniority in the division at which they passed the examination and they were posted in the Central division. In the central division there were vacancies and since the petitioners had passed the examination they were given promotion to the post of Junior Assistant on temporary and adhoc basis. It is the case of the respondent corporation that since the regularly selected candidates were not available, by way of temporary and adhoc arrangement such petitioners were given promotion. When the requisite examination was conducted for Central Division which is one of the eligibility criteria for promotion from the post of clerk to the post of Junior Assistant they were to be reverted. At that stage, persons who are petitioners of SCA No.5914/01 and others have approached this court for the relief interalia for restraining the respondent corporation from holding the examination until permanency benefits are granted to them on the post of Junior Assistant as if they are regularly selected. Pending this petition, initially ad-interim order granting statusquo was passed against reversion and thereafter on 8.11.01 the interim order was passed allowing the petitioners to appear in the requisite examination for immediate higher post, i.e. for the purpose of promotion to the post of Junior Accountant which is a promotional avenue from the post of Junior Assistant. It was also provided by the said interim order that 35 selected candidates who have successfully passed the examination

and their list is available and the same should be permitted to operate. However, at para 2 this court also continued the order of statusquo in favour of petitioners and therefore it has been submitted by the respondent corporation that even though the select list of regularly selected 35 persons is available the petitioners are not reverted since the order of statusquo as per the Corporation was not further clarified. At this stage, the matter is taken up for final hearing. Such petitioners are represented by Mr.B.G.Jani and Mr.A.S.Dave and Mr.Joshi appears for regularly selected persons awaiting their appointment.

6. So far as the other three categories of persons/employees of Jamnagar division are concerned it has been submitted on their behalf that the Standing Orders, dated 19th June, 1959, copy whereof is produced at annexure "E" in the compilation of SCA No.7831/02 are holding the field for further promotional avenues to the employees of ST corporation. Clauses 36 to 64 are various clauses relating to the promotions of employees other than Cl.IV employees. The said clauses, interalia, provide for passing of requisite examination for the promotion to the next higher post. Clause 52 of the aforesaid Standing Orders provides that in giving promotions preference shall be given to those who have passed or who have been specifically exempted from passing prescribed examination or trade test and are considered suitable for the higher posts over those who have not passed the prescribed examination or trade test with due regard to their seniority in the lower post. Cl.53 provides that if a person has failed at the first attempt in passing the prescribed examination he will be permitted to make two attempts for appearing in the qualifying examination. Cl.55 provides that if the waiting list of qualified persons for promotion to the higher post is prepared, the same shall remain valid even though the incumbents are not regularly promoted to the higher post for which they are qualified for want of clear vacancies in the departmental sector as per the ratio. Cl.58 of the Standing Orders provides that no departmental examination for a particular cadre may be held if sufficient candidates recommended for promotion to that particular category are already on the waiting list. It has been submitted on behalf of the petitioners by Mr.Joshi that since last 10 to 15 years the requisite examinations are not held . It is also submitted that in view of Cl.58 of the Standing Order that once the list is prepared and fully exhausted the examination is not held at all with a view to make room for availing 2nd and 3rd attempt by the persons who have failed at the first

attempt. That the case of the petitioners is that though at the relevant time the vacancies were available since the Jamnagar division was separated from Rajkot division by making independent division as there was no separate and distinct allotment of vacancies and therefore all the employees who were posted in Jamnagar Division and promoted thereafter are given promotion on temporary and adhoc basis even though they were otherwise eligible for regular promotion after successfully passing the examination and on account of the availability of posts. The case of this group of petitioners is that after passing the requisite examination some of the petitioners have been given promotion to the higher post of Traffic Controller and not only that they were permitted to appear in the requisite examination for promotion to the post of Asst.Traffic Inspector and the petitioners have also passed the said examination and they have also been further permitted to appear in the requisite examination for the promotion to the post of Traffic Inspector and they have passed the said examination and promotion is also given to them to the post of Traffic Inspector. However, the case of these petitioners is that since regular promotion is not given they have been continued on adhoc basis for a period of more than ten years. It is also submitted on behalf of this group of petitioners that those who failed at the first attempt somewhere in the year 1974 they have not been given any opportunity to make 2/3rd attempt because no requisite examination was held by the corporation and as a result thereof they have lost the opportunity during all these years. It has been submitted on behalf of the petitioners that when an employee is promoted one step higher and when the employee has also successfully passed the qualifying examination for one step higher which, in the present case, would be the post of Asst.Traffic Inspector or the Traffic Inspector, as the case may be, it would be unfair and unreasonable to ask such an employee to appear in the requisite examination of the lower cadre or in any case it would be unfair or unreasonable to revert these employees on the ground that they are not regularly promoted but their promotion was adhoc and temporary. The contention is also raised that the Corporation has issued GSO 937/90 whereby the policy decision was taken that those temporary promotions made for the year 1981-December, 1989 should regularised. However, their regular absorption shall be against the number of posts available and in any case on account of said GSO 937/90 they can not be reverted to the lower cadre or the promotion given on temporary basis can not be withdrawn when the corporation has taken such policy decision. It has also been submitted on behalf of petitioners that an

anomaly is created on account of delay caused in holding requisite departmental examination. Since the departmental examination is not held any time and as a consequence thereof no opportunity is given to the employee concerned to make 2/3rd attempt for passing the examination, the status of respective petitioners is continued as temporary and adhoc basis and therefore it is submitted on behalf of the petitioners that the petitioners should be granted permanency status on the higher post on which they are now working and their promotion from the post of Conductor to the post of Traffic Controller may be treated as regularised or rather regular promotion so as to have their further benefit of seniority in the said cadre of Conductor/driver, as the case may be, and also in the higher cadre of Traffic Controller or Asst.Traffic Inspector or Traffic Inspector, as the case may be.

7. On behalf of the respondent-corporation affidavit in reply is filed in SCA No.7830/02 and it has been submitted on behalf of the respondent corporation that the said reply may be treated as common in all the petitions where identical question is involved. Separate affidavit in reply is filed in SCA No.8737/02. The contention raised on behalf of the respondent corporation is that since the regular vacancies were not available for promotion to respective cadres, the promotions were given on temporary and adhoc basis. It has been submitted on behalf of the respondent corporation that the ratio is 75% for departmental promotion and 25% for direct recruitment and after GSO 937/90 the exercise was undertaken for absorption of employees concerned who were regularly promoted but their absorption has been made or rather regularised qua the available number of vacancies in that respective year. Since the petitioners were not eligible for absorption they would not be entitled to the benefit of GSO 937/90 and their promotion from the post of Conductor to the post of Traffic Controller at the most can be treated as temporary and adhoc or by way of irregular promotion or officiating on temporary basis. So far as conducting of examination is concerned, Mr.Dagli and Mr.Raval have submitted under the instructions from the officers of the corporation that within six months requisite examination would be held for such purpose and an opportunity shall be given to the concerned employee for appearing in the said examination.

8. In the aforesaid fact situation of various cases, the rights and contentions of respective petitioners

categorywise is required to be examined. There can not be any dispute on the point those who are promoted on temporary and adhoc basis can not seek any right to stick to the post or they should not make any room for the regularly selected persons available against the regular post. However, in the present case, by GSO 937/90 it was decided to regularise the promotions on account that non availability of directly selected candidates for temporary posts during the period of 1981-89. It is true that their absorption is to be made on regular posts against the availability of quota of promotees, but, at the same time, in view of the decision of the Corporation by GSO 937/90 and in view of the fact that the temporary and adhoc promotion in all cases from the cadre of Conductor to the cadre of Traffic Controller is for the period prior to 1990 which in any case is more than 12 years. It would be unreasonable to revert these petitioners on the ground that the regular posts are not available. The aforesaid is coupled with the fact that not only from the cadre of Traffic Controller but in certain cases they have been further promoted to the post of Asst.Traffic Inspector with successfully passing of departmental examination which is one of the eligibility criteria for promotion to the post of Asst.Traffic Inspector and further in certain cases they have been promoted to the post of Traffic Inspector after passing the requisite examination for promotion to the post of Traffic Inspector. Normally, once any employee is given promotion on regular post his seniority in the former cadre is not required to be counted and the seniority is required to be counted in the cadre to which he is promoted. However, since in the majority of cases, the department has used the language of promotion on temporary and adhoc basis and since the contention of the respondent corporation is that the regular posts are not available, it is difficult to arrive at any final conclusion that their seniority in the cadre of conductor is totally to be given go-bye or rather to be ignored. The contention is that they have not passed the requisite examination and against the same the case of the petitioners is that since no requisite examination is held it can hardly be said that the petitioners deserve reversion on the ground of not passing the requisite examination since no fault can be attributed to the concerned persons. Therefore, in view of peculiar facts and circumstances of the cases, as referred to hereiabove, I am inclined to take such view.

9. However, such is not the case so far as Mr.Jani's and Mr.Dave's clients are concerned who are the petitioners of SCA Nos 5914, 964, 7708 and 10989/01

because they have been promoted admittedly after 1990 and rather during the period on or about 1995 and they are promoted from the post of Clerk to the post of Junior Asst. It is true they had passed the requisite examination when they were in other division but the seniority in the cadre of clerk is maintained divisionwise and upon the request transfer when the concerned petitioners have abandoned their seniority for having their transfer in the central division it can not be validly contended by the concerned petitioners that their seniority in the cadre of clerk should be treated as they were in the other division, i.e. other than Central Division so as to march over the seniority of clerks in central division. It has been submitted on behalf of the respondent corporation that since requisite examinations were not held and with a view to meet with temporary exigency, promotions were given to the petitioners from the post of Clerk to the post of Junior Assistant in the central division but the perusal of promotion order itself shows that the said promotion is purely temporary and adhoc. Now, when the examinations were to be held from amongst the persons of cadre of clerk on the basis of seniority for promotion to the post of Junior Asst. these petitioners have no right to create a stalemate for undertaking the regular process of conducting of examination and also for giving promotion to the eligible persons on the basis of seniority from central division. It has been submitted that pending these petitions, the examinations are held and list of 35 persons who successfully passed the examination and who are eligible to be promoted to the post of Junior Asst.are waiting for their promotion on the regular post. At that stage, there can not be any legal justification in favour of petitioners who were given promotion on adhoc and temporary basis during the period of on or about 1995. When there is regular promotion it is obligatory on the part of persons who are promoted on temporary and adhoc basis to make room for regularly selected or promoted persons and such persons who are promoted purely on temporary and adhoc basis have no legal justification to create stalemate in regular promotion process. Mr.Jani submitted that his clients had applied for appearing in the examination but they have not been permitted. However, his clients appeared in the higher examination which is to be given for the cadre of Jr.Asst and the result is being waited. The contention of the corporation is that they could not have been permitted to appear in the examination even otherwise also because they have already passed in the examination when they were in the other division and in any case the result of the examination in higher cadre is

being awaited. Be that as it may, but the fact remains that the concerned petitioners have to make room for regularly promoted candidates and they can not stick to the post nor can they assert as of a right that they must be given permanency on the cadre of Junior Assistant when they were promoted clearly on temporary and adhoc basis. Mr.Jani made an attempt to submit that after decision for regularisation in the year 1990 there are other decisions for regularisation of irregular promotions and he submitted that not only that but on the basis of decision of 1990 by GSO 937/90 subsequently also the promotions given in the cadre of Jr.Assistants are regularised. No such details are produced before this court and therefore on nonavailability of details I can not accept the contention of Mr.Jani on its face value nor such contention can be examined on the factual aspects. Even otherwise also, a person who is promoted on temporary and adhoc basis has to make room for regularly selected or regularly promoted candidates and he can not stick to the post unless he has become due for regular promotion and decision is taken for giving him regular promotion, which is not so in the present case and, at the most, if the petitioners successfully passed the examination in higher cadre for which they were promoted pursuant to the interim order they can claim better merit in the subsequent promotion in comparision to the candidates who have passed departmental examination in the cadre of Clerk and while permitting the same the principles of seniority as per the Standing Order is required to be considered. Saying in other words, if the criteria is only of seniority-cum-merit then in that case between the same seniority the better merit of these petitioners can carry weight for promotion on regular post. But if the criteria is merit-cum-seniority, then possibly they can be said to be having more merit in comparison to the persons who have passed higher examination in the cadre of clerk for promotion to the post of Junior Assistant only. I am not expressing any final opinion on the said aspect and suffice it to say that passing of examination in the higher cadre by the concerned petitions, if any, shall be considered by the authorities while giving the next promotion in central division from the post of clerk to the post of Junior Assistant. At present, until regularly promoted candidates are posted, no extra benefits will accrue to these petitioners.

10. On the question of holding and conducting of examination as per standing order much has been said regarding lethargy on the part of ST corporation in not holding the examination in time. It appears that the passing of examination is a condition precedent for

promotion to the higher post and hence it is obligatory on the part of the ST corporation to hold the requisite examination in time so that as and when regular vacancies arise, the eligible persons can be posted by promotion. Such is the case even in the matter of direct selection. If the criteria for filling up the post is 25% by direct selection, it is obligatory for the corporation to fill up the posts by undertaking the direct selection. However, it appears that in the present case as it is reflected in the GSO 937/90 the direct selection or direct recruitment has not taken place for a period of about more than 10 years. Such lethargy on the part of concerned officer of not undertaking the exercise of holding examination in time and of not undertaking the process for filling up the post by direct selection deserves to be highly deprecated. It will be for the Secretary of the State Road Transport department or the Board of the Corporation to inquire into the matter and to see that proper steps are taken against the erring officers of the corporation and remedial steps are taken with a view to ensure that in future the examinations are conducted and/or held in time and direction selection/recruitment also takes place in time unless it is banned with a view to avoid the complications and with a view to avoid heart burning amongst the staff of the corporation. The Board of the corporation shall look into the matter and shall also submit report to this court abut the outcome of the inquiry and also the steps taken in this regard within a period of six months from the date of receipt of writ of this court. At this state, it is necessary to note that during the course of hearing, the learned counsel for the corporation under the instructions from the officers present in the court has stated that within six months from the date of receipt of writ of this court the requisite examination shall be held and therefore the corporation is directed to act as per the said statement.

11. Mr.Joshi appearing for the category of (ii), (iii) and (iv) petitioners also submitted that on account of formation of Jamnagar division by segregating from Rajkot division there are some posts available for regular promotion and therefore the concerned petitioners would be entitled for absorption on such regular posts available for promotion. No such details are given. However, it will be for the ST corporation to examine said aspect and to consider the case of concerned petitioners for regular absorption on the basis of availability of posts which shall be ordered hereafter.

12. In view of the aforesaid discussion and

considering the facts and circumstances of the case, I am of the view that the following directions would meet with the ends of justice:

(a) So far as the first category being the petitioners of SCA Nos 5914, 9624, 7708 and 10989/01 are not entitled to the relief of restraining the corporation from holding the examination or for the relief of directing the corporation to grant permanency benefits and to hold the examination thereafter and therefore the petitions of concerned petitioners fail.

However, it is observed that it would be open to the corporation to post regularly selected candidates from the post of clerk to the post of Junior Assistant by reverting the petitioners from the post of Junior Assistant to the post of Clerk, but, if, after the accommodation of all regularly promoted candidates, any vacancy remains unfilled, then, in that case, it would be open to the corporation either to allow the petitioners to continue on the post of Junior Assistant till the regular promotion or to undertake the exercise of regular promotion for the balance of posts and to fill up by regularly selected candidates for the promotion. If any of the petitioners therein pass the higher departmental examination then such factum of passing the higher departmental examination may be considered as one of the merits while taking decision for promotion.

(b) The 4th category of persons who have preferred petitions for giving directions to the corporation interalia to hold the departmental examination is concerned, the same stand allowed to the extent that the corporation shall hold the requisite examination at an interval of every six months in anticipation of future vacancies and promotions in different cadres. The corporation shall also hold the requisite examination at an interval of every six months to give an opportunity to the candidates who have failed at the first or second attempt, as the case may be, so as to enable them to appear in the examination by maximum three attempts.

(c) So far as (ii) and (iii) category of petitioners are concerned, it is directed that if the promotion from the post of Conductor to the post of Traffic Controller is given prior to 1990, then these persons shall not be reverted on the ground that their promotion was temporary or adhoc in the cadre of Traffic Controller.

(i) It is further directed that the corporation shall absorb the petitioners who were promoted prior to 1990 on

regular post of Traffic Controller after examining the number of available posts in Jamnagar division for promotees as they arise on the relevant date and even thereafter.

(ii) Concerned petitioners who have been promoted prior to 1990 as Traffic Controllers and subsequently from the post of Traffic Controller to the post of Asst.Inspector or from the post of Asst.Inspector to the post of Traffic Inspector shall be given opportunity to appear in the requisite departmental examination as may be held by the corporation and if they successfully pass the said examination and if regular vacancies of promotees are available they may be absorbed by way of regular selection keeping in view the interse seniority in the respective cadre.

(iii) The requisite examination for the cadres of Conductor, Traffic Controller, Asst.Traffic Inspector or for the cadre of Traffic Inspector shall be held by the ST corporation within six months from the date of receipt of writ of this court and within three months thereafter or in any case within one month after the declaration of the result, the aforesaid exercise shall be completed by the corporation.

(iv) The respondent corporation also shall undertake the exercise of filling up of the posts available for direct recruits within six months from the date of receipt of writ of this court or from the date of lifting of the ban on direct selection, whichever is later.

(v) It is made clear that the regular promotion shall be considered qua the available posts for the promotees and only the posts of direct recruits may be filled up by promotion on purely temporary and adhoc basis and as and when regularly selected candidates are available by mode of direct recruitment they shall be required to be reverted if the number of posts are not available.

13. All the petitions are allowed to the aforesaid extent and rule in each petition is made absolute to the aforesaid extent. There shall be no order as to cost

14. Mr.Utkarsh Jani appearing with Mr.B.G.Jani requests that the operation of this judgment be suspended or the interim relief may be continued for three months. Considering the facts and circumstances, the said request is rejected.